

THIRD AMENDMENT TO WASTE DISPOSAL AGREEMENT

THIS THIRD AMENDMENT TO SERVICE AGREEMENT (this "Third Amendment") is made and entered into as of June __, 2018 by and between WHEELABRATOR NORTH ANDOVER INC., a Delaware corporation ("WNA") and the TOWN OF NORTH ANDOVER (the "Town"). WNA and the Town are sometimes referred to herein, each as a "Party" and together the "Parties".

WITNESSETH:

WHEREAS, WNA and the Town are parties to that certain Service Agreement, dated as of September 13, 2013 (the "Original Agreement"), as amended by (i) that certain First Amendment to Service Agreement by and between the Parties dated as of June 30, 2009 (the "First Amendment"), and (ii) that certain Second Amendment to Service Agreement by and between the Parties dated September 13, 2013 (the "Second Amendment" and collectively with the First Amendment and the Original Agreement, the "Agreement"), pursuant to which WNA accepts Acceptable Waste (as defined therein) delivered by or on behalf of the Town for disposal at its resource recovery facility located in North Andover, Massachusetts; and

WHEREAS, the Parties now wish to amend the Agreement as provided herein.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual conditions and covenants contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Amendment to Section 5 — Tipping Fee and Payment.

Section 5(a) of the Agreement is hereby amended to add the following Tipping Fees for the Contract Years indicated below:

"July 1, 2018 through June 30, 2019:	\$66.23 per ton
July 1, 2019 through June 30, 2020:	\$68.23 per ton
July 1, 2020 through June 30, 2021:	\$70.28 per ton
July 1, 2021 through June 30, 2022:	\$72.38 per ton
July 1, 2022 through June 30, 2023:	\$74.55 per ton"

Section 5(c) of the Agreement is hereby deleted in its entirety and replaced with the following:

"WNA will invoice the Town weekly for all deliveries of Acceptable Waste at the facility."

Section 5(d) of the Agreement is hereby deleted in its entirety and replaced with the following:

"Tipping fees hereunder shall be due and payable within thirty (30) days of the date set forth on the invoice. Any payment for Tipping Fees not received within thirty (30) days of such date shall bear interest after such thirtieth day until paid at the lesser of one percent (1%) per month or the maximum legal rate per month."

2. Amendment to Section 6 — Term.

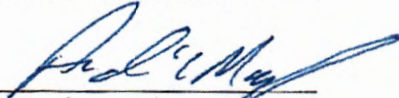
Section 6 of the Agreement is hereby deleted in its entirety and replaced with the following:

"Term. This Agreement shall be effective upon execution by the parties hereto, provided that performance hereunder shall commence on September 26, 2005 (the "Commencement Date") and shall remain in effect until June 30, 2023.

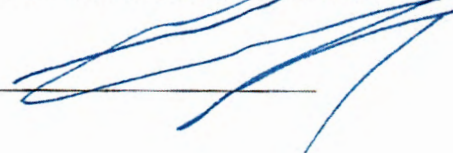
3. Except as specifically amended herein, all of the terms and conditions of the Agreement shall remain in full force and effect. To the extent any terms of this Third Amendment conflict with any terms of the Agreement, the terms of this Third Amendment shall prevail.

WITNESS the execution hereof as an instrument under seal, as of the day and year first above written.

TOWN OF NORTH ANDOVER


By: Andrew W. Taylor
Its: Town Manager

WHEELABRATOR NORTH ANDOVER INC.


By: _____
Its: _____

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SECOND AMENDMENT TO SERVICE AGREEMENT

THIS SECOND AMENDMENT TO SERVICE AGREEMENT is made and entered into as of September, 13 2013 by and among WHEELABRATOR NORTH ANDOVER INC., a Delaware corporation ("WNA") and the TOWN OF NORTH ANDOVER (the "Town").

WITNESSETH:

WHEREAS, WNA and the Town are parties to that certain Service Agreement, dated as of August 1, 2003, as amended by that certain First Amendment to Service Agreement between the parties and dated as of June 30, 2009 (the "First Amendment" and together with the August 1, 2003 Agreement, the "2003 Agreement"), pursuant to which WNA accepts Acceptable Waste (as defined therein) delivered by or on behalf of the Town for disposal at its resource recovery facility located in North Andover, Massachusetts; and

WHEREAS, as an incentive for the Town to agree to extend the Term of the 2003 Agreement for an additional five (5) year period, WNA has offered a Cash Incentive in the amount of \$39,000.00 payable to Town as set forth in 2(b) to this Amendment.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual conditions and covenants contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows: Capitalized terms not otherwise defined herein; and

1. Capitalized Terms. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the 2003 Agreement.
2. Amendment to Section 5(a) Tipping Fee and Payment.

Section 5(a) of the 2003 Agreement is hereby deleted in its entirety and the following shall be inserted in lieu thereof:

- (a) The Town shall pay WNA a tipping fee (the "Tipping Fee") per Ton of Acceptable Waste accepted at the Facility during each Contract Year, or delivered to an alternate disposal site as provided in Section 3 hereof, as follows:

Contract Year	Tipping Fee
July 1, 2013 through June 30, 2014	\$60.00
July 1, 2014 through June 30, 2015	\$61.50
July 1, 2015 through June 30, 2016	\$63.04
July 1, 2016 through June 30, 2017	\$64.61
July 1, 2017 through June 30, 2018	\$66.23

b) Cash Incentive payable to Town – Within 30 days of receipt of the signed amendment, WNA will pay the Town a cash incentive of \$39,000. If, for any reason, the agreement is terminated prior to June 30, 2018, the Town shall repay to WNA within 30 days a pro-rata portion of the incentive based on the unfulfilled commitment, calculated as follows:

$$\frac{((60 \text{ Months} - \text{Actual Months Contract was Fulfilled}) / 60 \text{ Months}) \times \$39,000}{}$$

3. Amendment to Section 6 Term.

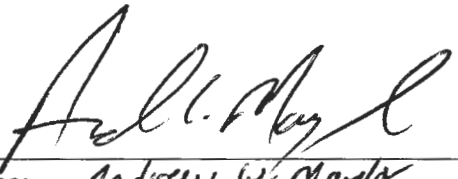
Section 6 of the 2003 Agreement is hereby deleted in its entirety and the following shall be inserted in lieu thereof:

Term. This Amendment shall commence upon the date hereof and shall remain in effect until June 30, 2018, unless earlier terminated pursuant to the terms hereto.

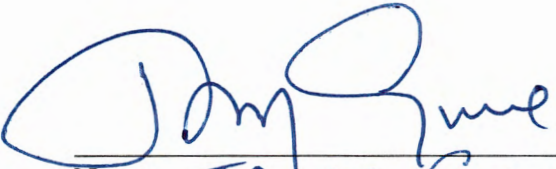
4. Except as specifically amended herein, all of the terms and conditions of the 2003 Agreement shall remain in full force and effect.

WITNESS the execution hereof as an instrument under seal, as of the day and year first above written.

TOWN OF NORTH ANDOVER, MASSACHUSETTS


Name: Andrew W. Mayla
Title: Town Manager

WHEELABRATOR NORTH ANDOVER INC.


Name: JARAJ GOSWAMI
Title: Regional Vice President

FIRST AMENDMENT TO SERVICE AGREEMENT

THIS FIRST AMENDMENT TO SERVICE AGREEMENT is made and entered into as of _____, 2009 by and among WHEELABRATOR NORTH ANDOVER INC., a Delaware corporation ("WNA") and the TOWN OF NORTH ANDOVER (the "Town").

WITNESSETH:

WHEREAS, WNA and the Town are parties to that certain Service Agreement, dated as of August 1, 2003 (the "2003 Agreement"), pursuant to which WNA accepts Acceptable Waste (as defined therein) delivered by or on behalf of the Town for disposal at its resource recovery facility located in North Andover, Massachusetts. Capitalized terms not otherwise defined herein; and

WHEREAS, as an incentive for the Town to agree to extend the Term of the 2003 Agreement for an additional three (3) year period, with a mutual option between the Town and WNA for an additional two (2) year period, WNA has offered to reduce the Tipping Fee for the final year of the Term of the 2003 Agreement (i.e., July 1, 2009 through June 30, 2010), as provided herein; and

WHEREAS, the parties now wish to amend the 2003 Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual conditions and covenants contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Amendment to Section 5(a) Tipping Fee and Payment.

Section 5(a) of the 2003 Agreement is hereby deleted in its entirety and the following shall be inserted in lieu thereof:

(a) The Town shall pay WNA a tipping fee (the "Tipping Fee") per Ton of Acceptable Waste accepted at the Facility during each Contract Year, or delivered to an alternate disposal site as provided in Section 3 hereof, as follows:

<u>Contract Year</u>	<u>Tipping Fee</u>
September 26, 2005 through June 30, 2006	\$64.00
July 1, 2006 through June 30, 2007	\$68.00
July 1, 2007 through June 30, 2008	\$69.50
July 1, 2008 through June 30, 2009	\$71.50
July 1, 2009 through June 30, 2010	\$64.00
July 1, 2010 through June 30, 2011	\$66.00
July 1, 2011 through June 30, 2012	\$68.00
July 1, 2012 through June 30, 2013	\$70.00
July 1, 2013 through June 30, 2014*	\$72.00
July 1, 2014 through June 30, 2015*	\$74.00

*Years ending 6/30/2014 and 6/30 /2015 will be at a mutual option between the Town and WNA as provided in Paragraph 2 hereof.

2. Amendment to Section 6 Term.

Section 6 of the 2003 Agreement is hereby deleted in its entirety and the following shall be inserted in lieu thereof:

6. Term. This Agreement shall be effective upon execution by the parties hereto, provided that performance hereunder shall commence on September 26, 2005 (the "Commencement Date") and end on June 30, 2013, subject to extension for an additional two years upon mutual consent of the Town and WNA at the tipping fee specified in Section 5(a) above.

3. Section 15.

The following shall be added as a new Section 15:

15. Prohibited Contracts. WNA agrees that it will not enter into a Prohibited Contract (as defined below) that contains a lower tipping fee than the then current Tipping Fee unless WNA offers the Town the opportunity to amend this Agreement to reduce the Town's then current Tipping Fee.

For the purposes of this Section 15, a "Prohibited Contract" shall mean a new contract or an extension or amendment of an existing contract (i) with a municipality located within a 40 mile driving distance of the Facility, (ii) with an effective date prior to June 1, 2010, (iii) where, if a new contract, the term is not less than two (2) and not more than five (5) years, and if an amendment or extension, the extension period or term added by the amendment is not less than two (2) and not more than five (5) years, and (iv) on terms which are substantially similar to the terms set forth in 2003 Agreement; provided however that an

amendment or extension of an existing contract not requiring the consent of both parties shall not be considered a Prohibited Contract.

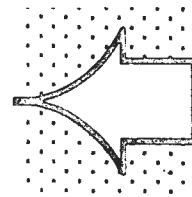
4. Except as specifically amended herein, all of the terms and conditions of the 2003 Agreement shall remain in full force and effect.

WITNESS the execution hereof as an instrument under seal, as of the day and year first above written.

TOWN OF NORTH ANDOVER

By: _____

Its: Town Manager



WHEELABRATOR NORTH ANDOVER INC.

By: _____

Its: Vice President

SERVICE AGREEMENT

THIS AGREEMENT is made and entered into as of August 1, 2003, by and among WHEELABRATOR NORTH ANDOVER INC., a Delaware corporation ("WNA") and the TOWN OF N. ANDOVER, MASSACHUSETTS (the "Town").

WITNESSETH:

WHEREAS, WNA is the owner and operator of a resource recovery facility located in North Andover, Massachusetts (the "Facility") where WNA accepts Acceptable Waste (defined hereinafter) for disposal by the process of combustion, generating electricity thereby, and disposing of residue therefrom; and,

WHEREAS, the Town is a body politic and corporate and a public instrumentality in the Commonwealth of Massachusetts; and

WHEREAS, WNA and the Town now wish to enter into an agreement pursuant to which the Town will deliver to the Facility, and WNA will accept at the Facility, certain quantities of Acceptable Waste;

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual conditions and covenants contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **Definitions.** For purposes of this Agreement, the following capitalized words and phrases shall be given the following respective meanings:

(a) **"Acceptable Waste"** means all municipal solid waste collected and disposed of by or on behalf of the Town, but excluding (i) explosives, ammunition and ordnance materials, pathological and biological wastes, (ii) asbestos and asbestos products, asphalt, radioactive materials, oil sludge and highly flammable substances, (iii) cesspool or other human wastes, liquid wastes, human and animal remains and leaves and yard waste (other than amounts legally acceptable in municipal solid waste), (iv) motor vehicles or large parts thereof, lead acid batteries, motorcycles, auto springs, auto transmissions, trailers, farm or other large machinery or large parts thereof and marine vehicles or large parts thereof, (v) large concentrations of plastics and tires, asphalt shingles, wallboard, sheetrock and wire and cable, (vi) nonburnable construction materials and demolition debris, (vii) cleaning fluids, crankcase oils, cutting oils, petroleum products (including without limitation, drained oil), oil based paints, acids, caustics, pesticides, insecticides, poisons, drugs, chemicals and fine powdery earth used to filter cleaning fluid, (viii) tree logs, tree stumps and any item of waste (other than mattresses, sofas or furniture) exceeding six feet in any one of its dimensions or being in whole or in part a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of twelve inches could be contained within such solid mass portion, (ix) all large household appliances, commonly referred to as "white goods", including, without limitation, refrigerators, stoves, dishwashing

machines, washing machines, drying machines, water heaters, and the like, (x) any Hazardous Substance or other item of waste the disposal or processing of which by WNA would be in violation of any Environmental Laws (except for de minimus amounts legally acceptable in municipal solid waste), and (xi) any item of waste which WNA, after consultation with the Town, reasonably believes the processing of which will damage the Facility. The parties recognize that some substances which are not, as of the date of this Agreement, considered Hazardous Substances or which WNA is not prohibited from processing at the Facility under any Environmental Laws may be determined subsequent to the date hereof to be Hazardous Substances or which WNA may be prohibited from processing at the Facility under Environmental Laws and, at the time of such determination and upon written notice thereof by WNA to the Town, such substances shall cease to be Acceptable Waste.

(b) "Commencement Date" means that date more particularly described in Section 6 hereof.

(c) "Commonwealth" means the Commonwealth of Massachusetts.

(d) "Contract Year" means a one-year period beginning on July 1 of each year during the term hereof other than the first Contract Year which shall commence on the Commencement Date and end on June 30, 2006.

(e) "Environmental Laws" means (i) all statutes, regulations, rules, ordinances, codes, licenses, permits, orders, decrees, approvals, plans, authorizations, and similar items (whether previously existing, now existing or hereafter enacted, amended, promulgated or issued, and whether or not contemplated by the parties as of the date of this Agreement) of the United States, the Commonwealth or any political subdivision thereof or of any agency, department, commission, board, bureau or other instrumentality of any of them, (ii) all binding and final judicial and administrative decrees, judgments and orders (whether previously existing, now existing or hereafter enacted, amended, promulgated, or issued, and whether or not contemplated by the parties as of the date of this Agreement), and (iii) any common law theories of liability applicable to claims, demands, requirements, damages, costs or expenses, in each case relating to or addressing the pollution, contamination, protection, or remediation of the environment or the protection or restoration of natural resources, including, but not limited to:

(1) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sections 9601 et seq.) including the Superfund Amendments and Reauthorization Act of 1986, Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq.), Clean Air Act (42 U.S.C. Sections 7401 et seq.), Hazardous Materials Transportation Act (49 U.S.C. Sections 1801 et seq.), Clean Water Act (33 U.S.C. Sections 1251 et seq.) including the Water Pollution Control Act, Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sections 136 et seq.), Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.), Safe Drinking Water Act (42 U.S.C. Sections 300(f) et seq.), the Endangered Species Act (16 U.S.C. Sections 1531 et seq.), the Medical Waste Tracking Act (42 U.S.C. Sections 6992 et seq.), and the Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sections 11001 et seq.), and any analogous state or local laws or ordinances, including, but not limited to, the Massachusetts Hazardous Waste

Management Act (Mass. Gen. Laws c. 21C), and Massachusetts Oil and Hazardous Material Release Prevention and Response Act (Mass. Gen. Laws c. 21E), and any regulations promulgated pursuant to any such federal, state or local laws or ordinances; and

(2) all requirements pertaining to reporting, licensing, permitting, investigation, remediation, mitigation, and/or removal of any releases or threatened releases of chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes (whether solid, liquid or gaseous), into the air, surface water, groundwater or land, or otherwise relating to the processing, distribution, use, treatment, recycling, storage, disposal, transport or handling of chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes (whether solid, liquid or gaseous).

(f) "Event of Force Majeure" means any of the following acts or events affecting WNA which may have a material adverse effect on its rights or obligations under this Agreement, if such act or event is beyond the control of WNA:

(i) an act of God, epidemic, landslide, lightning, earthquake, fire or explosion (which is not also the result of the willful or negligent action of WNA or a lack of due diligence by WNA), storm, flood, an act of war or of the civil or military authorities, civil disturbance, strike, lockout, work slowdown, or similar industrial or labor action or any other similar occurrence;

(ii) the order and/or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of the willful or negligent action of WNA or a lack of due diligence by WNA; provided that the contesting in good faith of any such order and/or judgment shall not, of itself, constitute or be construed as a willful or negligent action or lack of due diligence by WNA;

(iii) the failure to obtain, or suspension, termination, interruption or failure of renewal of any permit, license, consent, authorization or approval essential to the operation, ownership or possession of the Facility or the operation of the Landfill, if it is not also the result of the willful or negligent action of WNA or a lack of due diligence by WNA; provided that the contesting in good faith of any such failure to obtain, suspension, termination, interruption or failure of renewal shall not, of itself, be construed as a willful or negligent action or a lack of due diligence by WNA;

(iv) the adoption, promulgation, issuance, material modification or change in interpretation after the date of this Agreement of any federal, state or local law, regulation, rule, requirement, or ordinance, unless such law, regulation, rule, requirement or ordinance was on or prior to such date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any federal, state or local governmental body, administrative agency or governmental official having jurisdiction; or

(v) the failure of the communities in which the Facility or the Landfill is situated or the appropriate federal or state agencies or public or private utilities having operational jurisdiction over the Facility or the Landfill to provide and maintain all utilities, services, sewerage and water lines essential to the operation of the Facility or the Landfill, if it is not also the result of the willful or negligent action of WNA or a lack of due diligence by WNA .

(g) "Guarantee" means the Guarantee dated as of August 1, 2003 executed by Waste Management, Inc. and delivered to the Town.

(h) "Hazardous Substance" means any substance, waste or material listed or characterized as hazardous, extremely hazardous or toxic by the United States Environmental Protection Agency or any similar state environmental agency pursuant to any Environmental Laws.

(i) "Interim Period" means that period more particularly described in Section 5(b).

(j) "Landfill" means the site utilized for the disposal of residue generated at the Facility.

(k) "Recycle" means to recover or reclaim from the waste stream, at the source prior to collection, materials or by-products that are to be (i) reused, (ii) employed as an ingredient or a feedstock in an industrial or manufacturing process to make a product, or (iii) employed in a particular function or application as an effective substitute for a commercial product or commodity; provided, however, that to Recycle does not mean to deliver such materials or by-products to a landfill or to any Third Party for disposal or to recover energy from the combustion of such materials or by-products.

(l) "Third Party" means any natural person, corporation, association or partnership, and any governmental agency, department, commission, board, bureau or other instrumentality, other than WNA or the Town.

(m) "Tipping Fee" means the fee more particularly described in Section 5(a).

(n) "Ton" means a "short ton" of 2,000 pounds.

2. Guaranteed Delivery of Acceptable Waste.

(a) The Town shall deliver or cause to be delivered to the Facility within a reasonable period of time following collection and, except as hereinafter provided, WNA shall accept at the Facility, all Acceptable Waste that is not Recycled and that is collected by or on behalf of the Town in each Contract Year. The Town shall not deliver or cause to be delivered to the Facility any Acceptable Waste that is generated in any location other than within the jurisdiction of the Town. On or prior to March 31, 2005, and thereafter on or prior to March 31 in each Contract Year, the Town shall provide WNA with a written estimate of the number of Tons of Acceptable Waste it anticipates delivering to the Facility in each month in the initial Contract Year or the

following Contract Year, as applicable. Such estimate shall not be binding on the Town. The Town shall perform its obligations under this Agreement in material conformance with all applicable laws, including, without limitation, Environmental Laws.

(b) The Town shall promptly remove at its sole cost any waste rejected by WNA at the Facility in accordance with Section 3(a) hereof and shall be liable to WNA for all costs incurred by WNA in removing and disposing of such rejected waste if the Town fails to do so. The Town shall not be obligated to pay a Tipping Fee for waste so rejected.

(c) WNA shall operate the Facility and perform its obligations under this Agreement in material conformance with all applicable laws, including, without limitation, Environmental Laws, and shall provide for the disposal of ash and any other by-products of the operation of the Facility at landfills or other sites which are lawfully permitted and operated.

(d) For purposes of this Agreement any reference to the Town shall also include any hauler delivering waste to the Facility on behalf of the Town. The Town shall cause all its haulers to comply with the obligations of the Town hereunder, including, without limitation, including such obligations in all of its current contracts with its haulers, to the extent such contracts may be amended by the Town, and in all of its future contracts with its haulers.

3. Right of Refusal.

(a) WNA shall have the right without any liability to the Town to refuse deliveries of:

(i) waste other than Acceptable Waste; and

(ii) any waste delivered at other than the then established receiving hours as set forth herein or any waste delivered by or on behalf of the Town not in conformity with the terms of this Agreement.

(b) WNA may also refuse delivery of all or any portion of the Acceptable Waste collected by or on behalf of the Town if as a result of an Event of Force Majeure the Facility or any substantial portion thereof is shut down (other than in the normal course of operation and maintenance) and, as a result thereof, WNA is unable to accept and process such Acceptable Waste at the Facility. In such event, WNA shall designate an alternate disposal site that is lawfully permitted and operated and shall pay the cost of disposal of such Acceptable Waste at such alternative site. To the extent reasonably practicable, WNA shall give the Town not less than 24 hours' notice of any such shut down and designation of an alternate disposal site. The Town shall pay WNA the per Ton Tipping Fee for such Acceptable Waste less the reasonable incremental costs, if any, that are payable by the Town to cause such Acceptable Waste to be delivered to such alternate disposal site over and above (x) the cost of delivery of such Acceptable Waste to the Facility plus (y) the reasonable incremental costs, if any, that are attributable to the first five (5) additional miles of travel to such alternate disposal site.

Notwithstanding the foregoing:

(i) During any period during which WNA is unable to accept and process Acceptable Waste at the Facility due to an Event of Force Majeure, WNA at its expense will promptly, diligently and in good faith take all action reasonably necessary for it to be able to accept and process such Acceptable Waste including, without limitation, all actions reasonably necessary to obtain any temporary restraining orders, preliminary or permanent injunctions, approvals, licenses or permits needed to resume acceptance and processing of such Acceptable Waste and any repairs or other improvements to the Facility and any modifications to the operation thereof required for such purpose. WNA shall, during any such period, keep the Town duly notified (not less often than monthly) of all such actions, and the expected duration of any such period, and shall permit the Town to participate and intervene where permissible in all such actions if the Town so desires; provided, however, that WNA shall have the sole right to direct the prosecution of any such action and the Town shall reasonably cooperate with WNA in connection therewith and not do anything in the course thereof contrary to the interests of WNA.

(ii) If as a result of an Event of Force Majeure the capacity of the Facility to accept and process Acceptable Waste is reduced but not completely suspended, WNA shall allocate a portion of such reduced capacity of the Facility to the Town pro rata based on the Town's share of the total tonnage then under contract for disposal at the Facility from Massachusetts cities and towns which were prior to the Commencement Date members of the North East Solid Waste Committee, provided that, unless otherwise agreed to by the Town, if such capacity is insufficient to process all of the Town's Acceptable Waste, all of such Acceptable Waste shall be delivered to an alternate disposal site as provided in this paragraph 3(b) subject to the provisions of clause (iii) hereof. WNA shall not enter into any new contracts for the disposal of Acceptable Waste at the Facility subsequent to the occurrence of such Event of Force Majeure until the capacity of the Facility is sufficient to accept and process all Acceptable Waste delivered by the Town in accordance with this Agreement. Any Acceptable Waste not processed at the Facility in accordance with this clause (ii) shall be delivered to an alternate disposal site as provided in this paragraph 3(b) subject to the provisions of clause (iii) hereof.

(iii) If the period during which the Facility or any substantial portion thereof is shut down due to an Event of Force Majeure equals or exceeds ninety (90) days in duration, WNA may, at any time on or after such ninetieth day, (x) upon not less than fourteen (14) days notice to the Town assign this Agreement to the operator of an alternate disposal site that is lawfully permitted and operated, or (y) upon not less than one hundred twenty (120) days notice to the Town terminate this Agreement.

(iv) In the event WNA elects to assign this Agreement to the operator of an alternate disposal site pursuant to clause (iii) of this paragraph (b), the Town shall thereafter and during the remaining term of this Agreement deliver all such Acceptable Waste to such alternate disposal site and, at WNA's option, shall pay either WNA or such operator the applicable per Ton Tipping Fee provided for herein, less the reasonable incremental costs, if any, that are payable by the Town to cause such Acceptable Waste to be delivered to such alternate disposal site over and

above (x) the cost of delivery of such Acceptable Waste to the Facility plus (y) the reasonable incremental costs, if any, that are attributable to the first five (5) additional miles of travel to such alternate disposal site; and WNA shall thereafter have no further obligation to the Town under this Agreement, provided that, unless the Town shall otherwise consent, which consent shall not be unreasonably withheld, the obligations of the operator of such alternate disposal site under this Agreement shall be guaranteed by Waste Management, Inc. in accordance with the Guarantee.

(v) In the event WNA elects to terminate this Agreement pursuant to clause (iii) of this paragraph (b), from and after the effective date of such termination neither WNA nor the Town shall have any further obligation to the other party hereunder, provided that if at any time thereafter WNA is able to accept and process Acceptable Waste at the Facility it shall so notify the Town, and the Town, solely at its option, may elect to resume deliveries of Acceptable Waste to the Facility upon the terms and conditions, and at the then applicable per Ton Tipping Fee, provided for herein for the balance of the original term of this Agreement.

(c) WNA may also refuse delivery of Acceptable Waste it is unable to process for any reason not otherwise described in paragraphs (a) or (b) of this Section 3. In such event, WNA shall designate an alternate disposal site that is lawfully permitted and operated and shall pay the cost of disposal of such Acceptable Waste at such alternative site. To the extent reasonably practicable, WNA shall give the Town not less than twenty-four (24) hours' notice of any such refusal and designation of an alternate disposal site, provided that if such refusal is due to the substitution of other Acceptable Waste for the Town's Acceptable Waste, WNA shall give the Town not less than seven (7) days' notice of any such refusal and designation of an alternate disposal site. The Town shall pay WNA the per Ton Tipping Fee for such Acceptable Waste less the reasonable incremental costs, if any, that are payable by the Town to cause such Acceptable Waste to be delivered to such alternate disposal site over and above the cost of delivery of such Acceptable Waste to the Facility. The provisions of paragraph (b) of this Section 3 regarding the assignment or termination of this Agreement shall not apply to any refusal by WNA to accept and process Acceptable Waste contemplated by this paragraph (c).

(d) To the extent required by Environmental Laws, WNA shall inspect all waste delivered to the Facility and shall take such other steps as shall be necessary or appropriate to monitor discharges from the Facility for the presence of Hazardous Substances and shall promptly notify the Town if WNA becomes aware the Town or its haulers has delivered any Hazardous Substances to the Facility.

4. Manner of Delivery and Weighing.

(a) The Town shall deliver or cause to be delivered Acceptable Waste in a clean, orderly and safe manner, including, without limitation, in such a manner that it will not be spilled, other than on the tipping floor, or blown on the site, of the Facility. If Acceptable Waste is so spilled or blown, the Town shall promptly, at its sole cost, collect and remove such spilled or blown Acceptable Waste and if the Town fails to do so, the Town shall be liable to WNA for all costs of such clean-up by WNA. The Town shall adhere to all safety rules and regulations of WNA in delivering Acceptable Waste to the Facility.

(b) The parties recognize that the Town of North Andover is authorized to designate certain highway routes within the vicinity of the Facility to be used by the Town to deliver Acceptable Waste to the Facility. Unless otherwise authorized by the Town of North Andover, the Town shall use only the routes to the Facility designated by the Town of North Andover, provided that any failure of the Town to use such routes shall not constitute a default under this Agreement.

(c) Unless the Town of North Andover shall otherwise require by regulation or written order, scheduled delivery days and hours shall be 6:00 a.m. to 5:00 p.m., Monday through Friday, and 7:00 a.m. to noon on Saturday, exclusive of any customary holiday recognized in the Commonwealth. On any Saturday of a week during which is celebrated a customary holiday recognized in the Commonwealth, the scheduled delivery hours shall be 6:00 a.m. to 5:00 p.m.

(d) WNA shall utilize and maintain motor truck scales to weigh all vehicles delivering Acceptable Waste to the Facility in accordance with applicable state law. Each vehicle delivering Acceptable Waste to the Facility shall be weighed, indicating gross weight, tare weight, time and truck identification on a weight record. Such records shall be used by WNA as a basis for calculating monthly and yearly deliveries made by the Town. WNA reserves the right to modify the above arrangement with any other system designed to perform the same functions. WNA shall maintain records of the tonnage delivered by the Town and accepted by WNA each day and each month and will retain such record for a period of no less than three (3) years.

(e) The Town shall cause all vehicles used for delivery of Acceptable Waste to the Facility to be in safe and clean condition and in good repair and to be properly covered or enclosed so as to prevent any refuse, dirt, dust or other materials from falling or blowing out from the vehicles. The Town shall use or cause to be used only vehicles with the capability of dumping directly into the waste pit at the Facility and which have a capacity of three (3) tons or more. Such vehicles shall bear such names or means of identification as may be reasonably acceptable to WNA.

5. Tipping Fee and Payment.

(a) The Town shall pay WNA a tipping fee (the "Tipping Fee") per Ton of Acceptable Waste accepted at the Facility during each Contract Year, or delivered to an alternate disposal site as provided in Section 3 hereof, as follows:

<u>Contract Year</u>	<u>Tipping Fee</u>
September 26, 2005 through June 30, 2006	\$64.00
July 1, 2006 through June 30, 2007	\$68.00
July 1, 2007 through June 30, 2008	\$69.50
July 1, 2008 through June 30, 2009	\$71.50
July 1, 2009 through June 30, 2010	\$73.00

(b) Notwithstanding Section 5(a), if WNA enters into a contract with a municipality for the disposal of municipal solid waste for a one year term which includes any portion of the period from September 26, 2005 through June 30, 2006 (the "Interim Period"), with a tip fee of less than \$64 per Ton, the Tipping Fee shall automatically be reduced to such amount during the Interim Period. At the end of the Interim Period, the Tipping Fee shall be as set forth in Section 5(a) hereof.

(c) WNA shall invoice the Town within ten (10) days after the end of each month for all deliveries of Acceptable Waste at the Facility during such month.

(d) Tipping Fees hereunder shall be due and payable within thirty (30) days of the date of mailing of the invoice therefor by WNA. Any payment for Tipping Fees not received within forty-five (45) days of such date shall bear interest after such forty-fifth day until paid at the lesser of one percent (1%) per month or the maximum legal rate per month.

(e) The obligation of the Town to pay Tipping Fees and any other amount to be paid by it from time to time hereunder shall not be subject to diminution by reason of any shutdown of the Facility, set-off, abatement, counterclaim, existence of a dispute or any other reason, known or unknown, foreseeable or unforeseeable, which might otherwise constitute a legal or equitable defense or discharge of the liabilities of either party hereunder or limit recourse against either party. The foregoing provisions of this Section 5(e) shall not affect the obligations of the Town and WNA under Section 3 hereof or the right of either party to pursue independently any claim it might have against the other party based upon nonperformance by such party of its obligations hereunder.

(f) The Town shall plan and budget for all anticipated Tipping Fees payable hereunder in each Contract Year. Notwithstanding any provision of this Agreement to the contrary, the parties hereto recognize and agree that the obligation of the Town to make any payment hereunder is not a general obligation of the Town but is subject to appropriation by the Town for such purpose. Subject to the foregoing, so long as WNA shall not be in default hereunder, the Town shall not appropriate any amount for the disposal of Acceptable Waste in any Contract Year other than in accordance with this Agreement and shall promptly notify WNA if at any time the Town shall fail to appropriate any amount required to satisfy its obligations under this Agreement.

6. Term. This Agreement shall be effective upon execution by the parties hereto, provided that performance hereunder shall commence on September 26, 2005 (the "Commencement Date") and end on June 30, 2010.

7. Default.

(a) The following shall constitute events of default by the Town:

(i) the failure of the Town to make any payment required to be made to WNA under this Agreement within thirty (30) days after receipt of written notice from WNA that such amount is past due;

(ii) the failure of the Town to perform any of its other material obligations under this Agreement which failure is not cured within sixty (60) days, or a cure commenced and diligently pursued within sixty (60) days and cured within ninety (90) days, after the date of written notice from WNA of such failure; or

(iii) in the event the Town shall make an assignment for the benefit of creditors, file a voluntary petition in bankruptcy, be adjudicated as bankrupt or insolvent, file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, file any answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding or seek or consent to or acquiesce in the appointment of any trustee, liquidator or receiver of it or of all or any substantial part of the properties of it.

(b) The following shall constitute events of default by WNA:

(i) the failure of WNA to perform any of its material obligations under this Agreement which failure is not cured within sixty (60) days, or a cure commenced and diligently pursued within sixty (60) days and cured within ninety (90) days, after the date of written notice from the Town of such failure; or

(ii) in the event WNA shall make an assignment for the benefit of creditors, file a voluntary petition in bankruptcy, be adjudicated a bankrupt or insolvent, file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, file any answer admitting or not contesting the material allegations of a petition filed against it in any such proceeding or seek or consent to or acquiesce in the appointment of any trustee, liquidator or receiver of it or of all or any substantial part of the properties of it.

(c) Upon the occurrence of an event of default, in addition to any other remedies available in law or equity the party not in default may terminate this Agreement by written notice to the defaulting party.

(d) Any obligation to pay any fixed sum of money that may have accrued and be due and payable hereunder, and the obligations contained in Section 8 hereof, shall survive the termination or expiration of this Agreement.

8. Indemnification

(a) WNA shall indemnify, defend, reimburse and hold harmless the Town and its officers, employees and representatives from any and all threatened or actual claims, demands, suits and causes of action (collectively "Claims"), and all damages, penalties, costs and expenses

(including, without limitation, attorney's fees) arising therefrom (collectively "Damages"), incurred as a result of (i) any act or omission by WNA in connection with the performance of its obligations under this Agreement that gives rise to liability under any Environmental Laws, except to the extent that such Claims or Damages arise out of or result from the delivery to WNA by the Town of any waste that does not constitute Acceptable Waste (provided that WNA shall have given the Town notice of such delivery within two years of the date of such delivery), (ii) injury to or death of any person (including, without limitation, persons employed by the Town) or damage or destruction of property (including, without limitation, to the property of the Town and Third Parties), to the extent arising out of, resulting from or in any way connected with the negligence or willful misconduct of WNA or its officers, employees and representatives, (iii) breach of any obligation, covenant or undertaking of WNA contained herein, and (iv) any misrepresentation or breach of warranty by WNA contained herein.

(b) The Town shall indemnify, defend, reimburse and hold harmless WNA and its officers, employees and representatives from any and all Claims and Damages incurred as a result of (i) the delivery to WNA by the Town of any waste that does not constitute Acceptable Waste that gives rise to liability under any Environmental Laws (provided that WNA shall have given the Town notice of such delivery within two years of the date of such delivery), (ii) injury to or death of any person (including, without limitation, persons employed by WNA) or damage or destruction of property (including, without limitation, to the property of WNA and Third Parties), to the extent arising out of, resulting from or in any way connected with the negligence or willful misconduct of the Town or its officers, employees and representatives, (iii) breach of any obligation, covenant or undertaking of the Town contained herein, and (iv) any misrepresentation or breach of warranty by the Town contained herein.

(c) The obligations of a party to this Agreement (each an "Indemnitor") to indemnify, defend, reimburse and hold harmless the other party hereto and its officers, employees and representatives (each an "Indemnitee") as set forth in Paragraph (a) or (b) above shall not apply:

(i) To any Claims or Damages arising out of any acts or omissions or circumstances that occurred prior to the Commencement Date;

(ii) To any defense costs or expenses, including the costs of attorneys, consultants and/or investigators, unless authorized in advance and in writing by the Indemnitor; or

(iii) To any Claims or Damages to the extent caused by the acts or omissions of the Indemnitee.

(d) If the Indemnitee is presented with a claim by a Third Party, or an Indemnitee suffers a loss or damage that may be subject to indemnification or defense from the Indemnitor under this Agreement, the Indemnitee shall promptly give reasonable notice thereof to the Indemnitor, together with a complete copy of the Third Party claim (if any); provided, however, that the failure to promptly give such notice shall not relieve the Indemnitor from any liability for indemnification hereunder unless the Indemnitor is materially prejudiced in its ability to defend,

settle or otherwise assert rights to reduce exposure to, such liability, claim, demand, cost or exposure.

(e) After notification to the Indemnitor of any Third Party claim, if such claim is properly the subject of indemnification under this Agreement, the Indemnitor shall undertake the defense of such claim, at its expense, and using counsel selected by the Indemnitor, but reasonably satisfactory to the Indemnatee, even if the Indemnitor believes such claim is groundless. The Indemnatee may retain separate co-counsel at its sole cost and expense (unless responsibility for the cost thereof is authorized in writing by the Indemnitor pursuant to Section 8 (c)(ii) above) and participate in the defense of the Third Party claim. The Indemnatee shall cooperate in such defense at the Indemnitor's request and reasonable expense, including providing access to any of its employees, property and records for purpose of conducting an investigation of such claim and for the purpose of obtaining statements, photographs, and chemical analyses and taking such other steps as may be necessary to preserve evidence of the occurrence on which the claim is based.

(f) The defense and indemnity provisions set forth above should not be interpreted or deemed to limit, in any way, any right of action which may be asserted by any party against publicly or privately created funds established for the purpose of satisfying, wholly or in part, claims asserted or perfected by such parties.

(g) As long as the Indemnitor is conducting the defense of any Third Party claim, the Indemnatee will not consent to the entry of any judgment or enter into any settlement with respect to a Third Party claim without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld.

9. Limitation of Liability. Except for the specific obligations of the parties provided in Section 8 hereof, in no event whether based upon contract, tort or warranty shall either party hereto be liable to the other party hereto for, or obligated in any manner to pay, special, consequential or indirect damages.

10. Insurance.

(a) The Town shall at all times during the term of this Agreement maintain, or cause any hauler delivering Acceptable Waste to the Facility on behalf of the Town to maintain, in full force and effect the insurance coverages set forth in Exhibit I which is attached and made a part hereof, and all other insurances as may be required by applicable law. Such insurance coverages shall name WNA as an additional insured to the extent of the Town's indemnity obligation under Section 8 of this Agreement. Certificates of insurance must be furnished to WNA on or prior to the Commencement Date, and annually thereafter in the month of July, evidencing that such insurance has been procured and remains in force.

(b) WNA shall at all times during the term of this Agreement maintain in full force and effect the insurance coverages set forth in Exhibit I which is attached and made a part hereof, and all other insurances as may be required by applicable law. Such insurance coverages shall name the Town as an additional insured to the extent of WNA's indemnity obligation under

Section 8 of this Agreement. Certificates of insurance must be furnished to the Town on or prior to the Commencement Date, and annually thereafter in the month of July, evidencing that such insurance has been procured and remains in force.

11. Representations, Warranties and Additional Covenants of the Town. The Town hereby represents and warranties to, and covenants with, WNA as follows:

(a) The Town is a political subdivision of the Commonwealth of Massachusetts and a body politic and corporate duly organized and validly existing under the constitution and laws of the Commonwealth, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The Town has duly authorized the execution and delivery of this Agreement and the performance by the Town of its obligations hereunder and this Agreement has been duly and validly executed and delivered by the Town and constitutes a legal, valid and binding obligation of the Town, enforceable against the Town in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and to the exercise of judicial discretion in appropriate cases.

(c) Neither the execution or delivery by the Town of this Agreement, nor the performance by the Town of its obligations hereunder (i) conflicts with, violates or results in a breach of any law, regulation, requirement or order of any federal, state or local agency or governmental body applicable from time to time to the performance of any obligations under this Agreement, (ii) violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Town is a party or by which the Town or any of its properties or assets are bound, or constitutes a default thereunder, or (iii) results in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Town.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution, delivery and performance of this Agreement by the Town, except such as have been duly obtained or made.

(e) There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Town's knowledge, threatened, against the Town, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Town of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement.

(f) The Town has, and will renew or maintain in full force and effect, all permits, licenses or permissions or registrations with, or consents of, governmental authorities necessary in the performance of its obligations under this Agreement.

(g) On the date of execution and delivery of this Agreement, the Town shall deliver a

legal opinion to WNA from Palmer & Dodge LLP as to the enforceability of this Agreement against the Town and such other matters as WNA shall reasonably request.

12. Representations, Warranties and Additional Covenants of WNA. WNA hereby represents and warranties to, and covenants with, the Town as follows:

(a) WNA is duly created, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified as a foreign corporation to do business in the Commonwealth, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) WNA has duly authorized the execution and delivery of this Agreement and the performance by WNA of its obligations hereunder and this Agreement has been duly and validly executed and delivered by WNA and constitutes a legal, valid and binding obligation of WNA, enforceable against WNA in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and to the exercise of judicial discretion in appropriate cases.

(c) Neither the execution or delivery by WNA of this Agreement, nor the performance by WNA of its obligations hereunder (i) conflicts with, violates or results in a breach of any law, regulation, requirement or order of any federal, state or local agency or governmental body applicable from time to time to the performance of any obligations under this Agreement, (ii) violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which WNA is a party or by which WNA or any of its properties or assets are bound, or constitutes a default thereunder, or (iii) results in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of WNA.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution, delivery and performance of this Agreement by WNA, except such as have been duly obtained or made.

(e) There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of WNA's knowledge, threatened, against WNA, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by WNA of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement.

(f) WNA has, and will renew or maintain in full force and effect, all permits, licenses or permissions or registrations with, or consents of, governmental authorities necessary in the performance of its obligations under this Agreement.

(g) The performance by WNA of its obligations under this Agreement have been and are guaranteed by Waste Management, Inc. in accordance with the Guarantee.

(h) On the date of execution and delivery of this Agreement, WNA shall deliver legal opinions to the Town (i) from the general counsel to WNA as to the enforceability of this Agreement against WNA and such other matters as the Town shall reasonably request, and (ii) from the general counsel or assistant general counsel to Waste Management, Inc. as to the enforceability of the Guarantee against Waste Management, Inc., including, without limitation, the continued enforceability of the Guarantee in the event of the bankruptcy of WNA.

13. Negotiation, Mediation And Dispute Resolution.

(a) While this Agreement is in effect, WNA and the Town shall attempt in good faith to resolve disputes arising out of or relating to this Agreement. In the event of a dispute, WNA and the Town shall exchange relevant information and shall attempt to resolve the dispute prior to any party instituting any formal legal proceedings. If the matter cannot be resolved, the parties shall mediate the dispute pursuant to paragraph (b) of this Section 13.

(b) Any mediation hereunder shall be handled by an independent neutral party mutually agreed upon by WNA and the Town. The mediation shall be completed within thirty (30) days after mediation has been requested. Responsibility for expenses directly associated with the mediation shall be equitably apportioned among the parties, as reasonably determined by the mediator. In the event the parties cannot resolve the dispute through mediation, or by any further dispute resolution procedure mutually acceptable to the parties, then either party is permitted to institute legal proceedings as such party deems appropriate. In no event may a party commence litigation or any other proceeding unless and until completion of mediation pursuant to this section. Any litigation or other legal proceedings shall, unless otherwise agreed to in writing by the parties, be brought only in a state or federal court with jurisdiction within the Commonwealth.

14. Miscellaneous.

(a) Except as otherwise provided in Section 3(b)(iii), this Agreement may not be assigned by the Town or WNA without the prior written consent of the other party and any such assignment or attempted assignment without such written consent shall be void. Notwithstanding the foregoing, WNA may assign its interests and obligations hereunder without the prior written consent of the Town to a person, firm or corporation acquiring all or substantially all of the business and assets of WNA, by merger, consolidation, transfer of assets or otherwise, or to an entity controlling or controlled by, or under common control with, WNA, provided that WNA shall give the Town written notice of any such assignment not less than fourteen (14) days prior to the effective date of such assignment.

(b) WNA will receive title to all Acceptable Waste upon its delivery to the Facility.

(c) The laws of the Commonwealth shall govern the validity, interpretation, construction and performance of this Agreement.

(d) All notices pertaining to this Agreement shall be in writing, shall be deemed delivered (i) if personally delivered or (ii) within two (2) days after having been transmitted by prepaid registered or certified mail, return receipt requested, addressed as follows:

If to the Town: Town of North Andover
 120 Main Street
 North Andover, MA 01845
 Attn.: Town Manager

If to WNA: Wheelabrator North Andover Inc.
 285 Holt Road
 North Andover, MA 01845
 Attn: Plant Manager

Changes in the respective addresses to which such notices shall be sent may be made from time to time by either party by notice to the other party.

(e) All prior agreements, understandings and negotiations pertaining to the subject matter hereof for the term hereof are merged herein and superseded hereby, there being no other agreement or understanding than those written or specified herein. The parties acknowledge and agree that on and after the execution and delivery of this Agreement by the parties hereto neither party shall have any obligation pursuant to the Article XI.2 of the Service Agreement dated as of April 8, 1981, between WNA and the Town and that such provision shall be null and void as of the date of execution and delivery hereof by such parties.

(f) If any provision of this Agreement is held invalid by any court or body of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect to the greatest extent permitted by law.

(g) No custom, act, forbearance, or words or silence at any time, gratuitous or otherwise, shall impose any additional obligation or liability upon either party or waive or release either party from any default or the performance or fulfillment of any obligation or liability or operate against either party as a supplement, alteration or amendment or change of any term or provision unless set forth in a written instrument duly executed by such party expressly stating that it is intended to impose such an additional obligation or liability or to constitute such a waiver or release, or that it is intended to operate as such a supplement, alteration, amendment or change.

(h) All rights and remedies of each party shall be cumulative and not alternative, in addition to and not exclusive of any other right or remedy to which such party may be lawfully entitled in case of any breach or threatened breach of any term or provision herein except as otherwise expressly provided herein. The rights and remedies of each party shall be continuing and not exhausted by any one or more uses thereof, and may be exercised at any time or from

time to time and as often as may be expedient. Any option or election to enforce any such right or remedy of each party may be exercised or changed at any time or from time to time.

WITNESS the execution hereof as an instrument under seal, as of the day and year first above written.

TOWN OF N. ANDOVER, MASSACHUSETTS

By: *Yvonne A. Reed*

Its: Town Manager

WHEELABRATOR NORTH ANDOVER INC.

By: *David M. Boevar*

Its: Vice President

EXHIBIT I

INSURANCE

A. During the term of this Agreement, the Town or any hauler delivering Acceptable Waste to the Facility on behalf of the Town shall keep in force the following insurance coverages:

<u>Coverages</u>	<u>Limits of Liability</u>	
Workers' Compensation Employers' Liability Insurance	Statutory	\$500,000
Comprehensive Motor Vehicle Liability Insurance	Per Accident and Aggregate	\$1,000,000
Comprehensive General Liability Insurance including Completed Operations and Contractual Liability	Per Accident and Aggregate	\$1,000,000
Comprehensive Excess Liability (Umbrella)	Per Accident and Aggregate	\$2,000,000

The Town's insurance shall be primary with respect to any insurance maintained by WNA and shall not call on WNA's insurance for contributions with respect to the Town's contractual liability.

Before commencement of disposal hereunder and annually thereafter, the Town shall furnish to WNA certificates of insurance to the effect that such insurance has been procured and is in force. The certificates shall contain the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in policy effecting the certificate holder, thirty (30) days prior written notice will be given the certificate holder."

B. During the term of this Agreement, WNA shall keep in force the following insurance coverages:

Coverages	Limits of Liability	
Workers' Compensation Employers' Liability Insurance	Statutory	\$500,000
Comprehensive Motor Vehicle Liability Insurance	Per Accident and Aggregate	\$1,000,000
Comprehensive General Liability Insurance including Completed Operations and Contractual Liability	Per Accident and Aggregate	\$6,000,000
Comprehensive Excess Liability (Umbrella)	Per Accident and Aggregate	\$2,000,000

WNA's insurance shall be primary with respect to any insurance maintained by the Town and shall not call on the Town's insurance for contributions with respect to WNA's contractual liability.

Before commencement of disposal hereunder and annually thereafter, WNA shall furnish to the Town certificates of insurance to the effect that such insurance has been procured and is in force. The certificates shall contain the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in policy effecting the certificate holder, thirty (30) days prior written notice will be given the certificate holder."

GUARANTEE AGREEMENT

This Guarantee Agreement (this "Guarantee"), dated as of August 1, 2003, is made and entered into by Waste Management, Inc., a Delaware corporation ("Guarantor").

WITNESSETH:

WHEREAS, Wheelabrator North Andover Inc. (the "Company") is entering into a Service Agreement (the "Agreement") effective as of the date of this Guarantee with the Town of North Andover (the "Town") pursuant to which the Town will deliver municipal solid waste to the Company's waste-to-energy facility for disposal; and

WHEREAS, Guarantor will directly or indirectly benefit from the Agreement.

NOW, THEREFORE, in consideration of the Town entering into the Agreement, Guarantor hereby covenants and agrees as follows:

1. Guarantor and its successors and assigns hereby guarantee to the Town that it will cause the Company to perform all of its obligations and responsibilities in accordance with the terms and conditions of the Agreement. Guarantor shall be entitled to all the defenses and benefits of the terms and conditions of the Agreement.

2. This Guarantee shall become effective only upon the Commencement Date (as defined in the Agreement).

EXECUTED as of the day and year first above written.

WASTE MANAGEMENT, INC.

By: 

Name: Ronald H. Jones

Title: Vice President & Treasurer

By: 

Name: Jay Clement

Title: Assistant Treasurer

CERTIFICATE OF THE TOWN OF NORTH ANDOVER, MASSACHUSETTS

We, the undersigned Town Manager and the undersigned Town Clerk of the Town of North Andover, Massachusetts (the "Town"), hereby certify as follows:

1. That pursuant to a vote of the Board of Selectmen of the Town (the "Service Agreement Vote") taken at a duly called meeting of the Board of Selectmen on June 16, 2003, the undersigned Town Manager has duly executed and delivered the Service Agreement dated as of August 1, 2003 (the "Service Agreement") between the Town and Wheelabrator North Andover Inc.
2. That pursuant to the Town Charter, and the Service Agreement Vote, the Town Manager is the person duly authorized to execute and deliver the Service Agreement.
3. The signature of the Town Manager appearing below is the genuine signature of the person who held such office when the Service Agreement was executed and delivered.
4. That the meeting of the Board of Selectmen at which the Service Agreement Vote was passed was open to the public and the vote was not taken by secret ballot. Notice stating the place, date and time of the meeting was filed with the Town Clerk and a copy thereof posted in the office of the Town Clerk or on the principal official bulletin board of the town at least 48 hours, including Saturdays but not Sundays and legal holidays, prior to the time of the meeting and remained so posted at the time of the meeting. No deliberations or decision were taken in executive session, and the official record of the meeting was made available to the public promptly and remains available to the public, all in accordance with G.L. c.39, s.23B as amended.
5. That the Service Agreement Vote and all other proceedings of the Town necessary to the authorization, execution and delivery by the Town of the Service Agreement remain in full force and effect as of the date hereof, and no such proceedings have been amended or repealed.
6. That no litigation is pending or, to our knowledge, threatened in any court to restrain or enjoin the execution, delivery and performance by the Town of the Service Agreement or in any way contesting or affecting the validity of the Service Agreement.

IN WITNESS WHEREOF, we hereunto set our hands this 1st day of ~~August~~ ^{September}, 2003.

TOWN OF NORTH ANDOVER,
MASSACHUSETTS

Yvonne H. Rees
Town Manager

Joyce A. Bradshaw
Clerk


OFFICER'S CERTIFICATE
WHEELABRATOR NORTH ANDOVER INC.

I, Michael O'Friel, am Vice President and Assistant Secretary of Wheelabrator North Andover Inc., a Delaware corporation ("WNA"). As Vice President and Assistant Secretary, I am duly authorized to execute and deliver this certificate on behalf of WNA.

I do hereby certify that the following named person is, as of the date hereof, a duly elected, qualified, and acting officer of WNA, holding the office set forth below, and is duly authorized to execute and deliver the Service Agreements dated as of August 1, 2003 between WNA and the municipalities listed on Attachment A hereto. I further certify that the signature appearing opposite such officer's name is that officer's genuine signature.

<u>Name</u>	<u>Title</u>	<u>Signature</u>
David M. Beavens	Vice President	

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate as of the 1st day of August, 2003.



Michael O'Friel
Vice President and Assistant Secretary

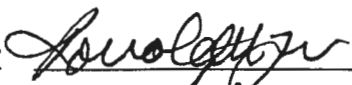

Attachment A

Town of Andover
Town of Arlington
Town of Bedford
Town of Belmont
Town of Boxborough
Town of Burlington
Town of Carlisle
Town of Dracut
Town of Hamilton
Town of Lexington
Town of Lincoln
Town of Manchester
Town of North Andover
Town of North Reading
City of Peabody
Town of Tewksbury
Town of Watertown
Town of Wenham
Town of Westford
Town of Wilmington
Town of Winchester

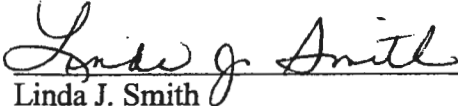
OFFICER'S CERTIFICATE
WASTE MANAGEMENT, INC.

I, Linda J. Smith, am Assistant Secretary of Waste Management, Inc., a Delaware corporation ("WMI"). As Assistant Secretary, I am duly authorized to execute and deliver this certificate on behalf of WMI.

I do hereby certify that the following named persons are, as of the date hereof, duly elected, qualified, and acting officers of WMI, holding the offices set forth below, and are duly authorized to execute and deliver the Guarantee dated as of August 1, 2003 in favor of the municipalities listed on Attachment A hereto. I further certify that the signatures appearing opposite such officers' names are those officers' genuine signatures.

<u>Name</u>	<u>Title</u>	<u>Signature</u>
<u>Ronald H. Jones</u>	<u>Vice President & Treasurer</u>	
<u>Jay Clement</u>	<u>Assistant Treasurer</u>	

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate as of the 1st day of August, 2003.


Linda J. Smith
Assistant Secretary

Attachment A

Town of Andover
Town of Arlington
Town of Bedford
Town of Belmont
Town of Boxborough
Town of Burlington
Town of Carlisle
Town of Dracut
Town of Hamilton
Town of Lexington
Town of Lincoln
Town of Manchester
Town of North Andover
Town of North Reading
City of Peabody
Town of Tewksbury
Town of Watertown
Town of Wenham
Town of Westford
Town of Wilmington
Town of Winchester